



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision Request for Variance - Setback Bears Nest Trail, LLC / Map 64, Lot 5

June 20, 2013

Applicant: Bears Nest Trail, LLC
P.O. Box 50849
Sarasota, FL 34232

Location: Bears Nest Trail, Moultonborough, NH (Tax Map 64, Lot 5)

On June 5, 2013, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Bears Nest Trail, LLC (hereinafter referred to as the "Applicants" and/or "Owners") for a variance from Article III Paragraph B (3) to permit the corner of an existing Lookout Tower's roof overhang to encroach into the required setback on their parcel located in the Commercial Zone A.

Based on the application, and testimony given at the hearings, the Board hereby makes the following findings of fact:

- 1) The property is located on Bears Nest Trail (Tax Map 64, Lot 5).
- 2) The applicant is the owner of record for the lot.
- 3) On May 28, 2013, Attorney Boldt requested to be placed on the ZBA agenda of June 19, 2013.
- 4) On June 5, 2013, the ZBA voted 5-0 to conduct a Site Visit at the location on June 15, 2013, and to continue the Public Hearing to June 19, 2013.
- 5) The ZBA conducted a Site Visit on June 15, 2013.
- 6) The applicant was represented at the Public Hearing by Christopher L. Boldt, Esquire. Present for the hearing were Dan Ellis, P.E.; Ames Associates and Joanne K. Coppinger, P.E.
- 7) The lot is located in Residential Agricultural (RA) Zoning District.

- 8) The existing recreational Lookout Tower was recently constructed in violation of the twenty (20) foot sideline setback and on a slope greater than twenty-five (25) percent.
- 9) The violation was discovered by the Code Enforcement Officer and the applicant was instructed to remove the structure or apply for Variances from the ZBA, among other requirements to be compliant with Town codes and ordinances.
- 10) The southwest corner of the Tower's roof overhang encroaches into the 20 foot setback adjacent to the Lakes Region Conservation Trust's property by 29 inches where an 18 inch encroachment for roof overhang is typically allowed by the Code Enforcement Officer (CEO).
- 11) The applicant must obtain two variances from the ZBA, a building permit from the CEO, and a Conditional Use Permit (CUP) from the Planning Board for the structure to remain.
- 12) Don Cahoon, (CEO) stated that there was not a permit issued at the time of construction. They have applied for one since, and at the date of the ZBA hearings, the permit application is still pending, awaiting additional engineering reports and materials.
- 13) Don Berry, representing the abutter, Lakes Region Conservation Trust (LRCT) stated he had a discussion regarding the impacts on their property. What type of restoration and modifications are proposed. He did not speak for or against the Variance request.
- 14) Granting the Variance would not be contrary to the public interest as the gain to the public would outweigh the loss to the applicant if the structure or part of the structure were to be removed.
- 15) Granting the Variance is consistent with the spirit of the Ordinance as the setback requirement is meant to act as a buffer to other buildings and allow light and air between buildings and access for emergency responders and there is more than sufficient distance between any theoretical building, however, since this is conservation land, there will never be any structure on the abutting land by deed and agreement; therefore the spirit is met.
- 16) By granting the Variance, substantial justice is done for the applicant because the setback buffer will never be needed as it abuts non-buildable land and the amount requested for relief is relatively small at 21".
- 17) Granting the Variance does not diminish the value of surrounding properties because there is no effect on the value of developable or developed land; it is held by a non-profit conservation trust where the land cannot be built upon.
- 18) No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of the setback dimensional requirement because of the location of the lookout tower and the fact that no buildings will ever be constructed on the abutting conservation land that would make the buffer be needed to satisfy the intent of the ordinance.

19) On June 19, 2013, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, Nolin, Zewski, Bickford, Crowe) and none (0) opposed, to Grant the requested variance and to close the Public Hearing. They moved to direct Staff to draft a formal Notice of Decision document for review for approval and signing at the next regular meeting.

The Board of Adjustment, on July 17, 2013, approved this formal Notice of Decision language and authorized the Chairman to sign the Setback Variance Notice of Decision and send to the applicant and place same in the case file by a vote of five (5) in favor (Stephens, Nolin, Zewski, Bickford, Crowe), none (0) opposed.

The decision made to Approve the variance on June 19, 2013 shall not take effect until thirty (30) days have elapsed and no request for rehearing has been filed in accordance with RSA 677:2, or that if such request has been filed, it has been dismissed or denied, in accordance with RSA 677:3.



Robert H. Stephens
Chairman, Zoning Board of Adjustment

Date 7-19-2013